



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2004

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2003-9084

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211536.

The City of Baytown (the "city") received a request for personnel, medical and payroll files of a named police officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number is excepted from required public disclosure under section 552.101 of the Public Information Act (the "Act") in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Federal law deems social security numbers confidential only in order to protect the privacy of individuals. The submitted documents contain the named officer's social security number, which normally might be excepted from disclosure under section 552.101 in conjunction with federal law. Here, however, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise excepted from disclosure to the public, because the requestor has provided a signed authorization from the named officer which authorizes release of the officer's employment records to the requestor. Gov't Code § 552.023 (person or person's authorized

representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests); *see id* § 552.229 (consent to release information under special right of access). Thus, in this case, the officer's social security number is not excepted from disclosure to the requestor by section 552.101 in conjunction with federal law.

Section 552.101 also encompasses information made confidential by statute. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-4 form is tax return information and must be withheld unless release is authorized under section 6103(c). *See* 26 U.S.C. § 6103(c) (providing for release of tax return information).

The submitted documents also include an Employment Eligibility Verification, form I-9. Form I-9 is governed by section 1324a of title 8 of the United States Code, which provides that an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the I-9 form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You assert that section 552.117 of the Government Code is applicable to the named officer's personal information. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). The city must, therefore, withhold those portions of the submitted documents that reveal the named peace officer's home address, home telephone number, and family member information pursuant to section 552.117(a)(2). We have marked this information accordingly. We note, however, that section 552.117(a)(2) deems social security numbers confidential only in order to protect the privacy of peace officers. Therefore, the requestor has a special right of access pursuant to section 552.023 to the named officer's social security number that would otherwise be excepted from disclosure to the public under section 552.117(a)(2). *See* Gov't Code §§ 552.023, 552.229. Thus, the city must release the officer's social security number to the requestor.

Finally, you assert that section 552.130 of the Government Code exempts from disclosure certain marked information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Section 552.130 is intended to protect an individual's privacy interest. Therefore, the requestor has a special right of access pursuant to section 552.023 to information that would be excepted from disclosure to the public under section 552.130. *See* Gov't Code §§ 552.023, 552.229. Thus, in this case, the city must release this information to the requestor.

In summary, the submitted W-4 form is tax return information and must be withheld unless release is authorized under section 6103(c) of title 26 of the United States Code. The I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system. The peace officer's home address, home telephone number, and family member information must be withheld pursuant to section 552.117(a)(2). The remaining information must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 211536

Enc. Submitted documents

c: Ms. Michelle Lauve
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(w/o enclosures)